

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Richard J. Klein,)	
)	Case No. 1:01-CV-794
Petitioner,)	
)	
vs.)	
)	
Harold Carter,)	
)	
Respondent.)	

O r d e r

On February 14, 2005, in response to repeated arguments by Respondent that Petitioner had failed to exhaust certain of his claims in light of his failure to seek delayed direct appeal to the Ohio Supreme Court with respect thereto, United States Magistrate Judge Timothy S. Black issued an order directing Petitioner to inform the Court whether he intended to pursue such a remedy. The Magistrate Judge's order did not address the merits of any of Petitioner's claims nor of Respondent's waiver arguments. Rather, the order directed Petitioner to clarify whether he intended to pursue a potentially available remedy.

In lieu of a response to the Magistrate Judge's order, Petitioner Klein filed an objection attacking the order as though it were a resolution of issues of procedural default and/or waiver on their merits. On March 23, 2005, this Court issued an order indicating that Petitioner's arguments in support of his objection were misplaced. The Court advised Petitioner that the appropriate response to the Magistrate Judge's order would have been an indication that Petitioner intended, or did not intend,

to seek a delayed direct appeal to the Ohio Supreme Court. On that basis, the Court **OVERRULED** Petitioner's objection and extended the deadline for Petitioner's response to the Magistrate Judge's order to April 8, 2005.

In his response to this Court's March 23 order, Petitioner indicates that he does not intend to pursue a delayed appeal to the Ohio Supreme Court unless ordered to do so. The Court construes that response as conclusive of the matter and **REMANDS** this action to the Magistrate Judge for further proceedings in light of Petitioner's indication that he does not intend to pursue the potential remedy of delayed appeal to the Ohio Supreme Court.

IT IS SO ORDERED.

/s/
Sandra S. Beckwith, Chief Judge
United States District Court